

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

In re HAIN CELESTIAL HEAVY METALS  
BABY FOOD LITIGATION

Case No. 2:21-cv-0678-JS-AYS

This Document Relates to: All Actions

This Document also Relates to:

LORI-ANNE ALBANO, MYJORIE PHILIPPE,  
REBECCA TELARO, and ALYSSA ROSE, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

HAIN CELESTIAL GROUP, INC., BEECH-NUT  
NUTRITION COMPANY, GERBER PRODUCTS  
COMPANY, and NURTURE, INC.,

Defendants.

Case No. 2:21-cv-01118-JS-AYS

**DECLARATION OF DOUGLAS J.  
MCANAMARA IN SUPPORT OF ALBANO  
PLAINTIFFS' MOTION FOR  
APPOINTMENT OF COHEN MILSTEIN  
SELLERS & TOLL PLLC AND GIBBS  
LAW GROUP LLP AS INTERIM  
COUNSEL**

I, Douglas J. McNamara, declare:

1. I am an attorney admitted to practice in the Eastern District of New York. I am a Partner with the law firm of Cohen Milstein Sellers & Toll, PLLC, and I have personal knowledge of the matters stated herein and, if called upon, could competently testify thereto. I am making this

declaration in support of Albano Plaintiffs' Motion for Appointment of Cohen Milstein Sellers & Toll PLLC and Gibbs Law Group LLP as Interim Counsel.

2. Filing the Complaint in this matter required an extensive preliminary evaluation of the case, retention of a plaintiff, and organization with co-counsel. It also required significant factual research into the February 4, 2021 Congressional Report, its supporting documentation and data, and the third-party sources the report relied on. In addition to reviewing publicly available information, Proposed Counsel have commissioned their own laboratory testing to confirm that the Defendants' products still contain unsafe levels of toxic metals, while also speaking with potential consulting experts regarding the impact toxic metals have on child development. Proposed Counsel also conducted significant legal research in preparation for filing suit. This included determining which causes of action were viable, which damages theories to assert, whether this case could be feasibly brought as a class action, and what issues might arise from bringing a class as opposed to an individual case and potential defenses, including preemption or primary jurisdiction arguments.

3. Cohen Milstein is one of the largest plaintiff-side litigation firms in the country.<sup>1</sup> Cohen Milstein has been recognized as a "class-action powerhouse,"<sup>2</sup> achieving results across a wide range of practice areas, and is considered one of "America's 25 Most Influential Law Firms."<sup>3</sup>

4. Cohen Milstein's Consumer Practice Group has also been recognized as a leader in the field – by courts, peers, and the legal press – for work on a wide range of consumer issues,

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<sup>1</sup> The qualifications of Cohen Milstein are set forth in the firm's resume, attached as Ex. A to this declaration.

<sup>2</sup> *Here Comes Treble*, Forbes (Aug. 27, 2003), [https://www.forbes.com/2003/08/27/cz\\_mf\\_0827antitrust.html#7df201226fc2](https://www.forbes.com/2003/08/27/cz_mf_0827antitrust.html#7df201226fc2).

<sup>3</sup> *America's Most Influential Law Firms: The Forum 2018*, National Law Journal & The Trial Lawyer Magazine, <https://www.thetriallawyer magazine.com/wp-content/uploads/2019/01/2018-the-forum.pdf> (accessed Apr. 9, 2020).

ranging from safe drinking water, toxic or defective products, and false and deceptive advertising. The group is “known for notching big wins for plaintiffs,”<sup>4</sup> and has been recognized as a Group of the Year by Law360 for several years running.<sup>5</sup> Members of the Consumer Practice Group served in leadership positions in many consumer protection cases that achieved excellent results for the class, including: *In re Anthem, Inc. Data Breach Litigation*, No. 5:15-md-2617-LHK (N.D. Cal.) (co-lead counsel, in case resulting in the then-largest data breach settlement in U.S. history); *In Re: Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.*, No. 15-md-2627-AJT-MSN (E.D. Va.) (co-lead counsel, in a case resulting in \$36 million settlement involving toxic flooring); and *Khoday v. Symantec Corp.*, No. 11-cv-00180-JRT-TNL (D. Minn.) (sole lead, in a case where defendant failed to disclose that a product was available for free, resulting in a \$60 million settlement).

5. Cohen Milstein’s efforts in this case will be led by two highly experienced attorneys. Geoffrey A. Graber is a partner in Cohen Milstein’s Consumer Practice Group, where he specializes in representing consumers in complex class action litigation involving issues of false advertising, fraud, and other forms of unfair business practices. Mr. Graber has litigated and continues to litigate high-profile matters, including *LLE One, LLC v. Facebook*, No. 4:16-cv-06232-JSW (N.D. Cal.); *DZ Reserve v. Facebook*, No. 4:18-cv-04978 (N.D. Cal.); *GCDC Grilled*

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<sup>4</sup> Shayna Posses, *Consumer Protection Group of the Year: Cohen Milstein*, Law360 (Jan. 25, 2019), <https://www.law360.com/articles/1117702/consumer-protection-group-of-the-year-cohen-milstein>.

<sup>5</sup> See *id.*; Joyce Hanson, *Consumer Protection Group of the Year: Cohen Milstein*, Law360 (Jan. 17, 2020), <https://www.law360.com/articles/1233361/consumer-protection-group-of-the-year-cohen-milstein>; *Law360 Names Practice Groups of the Year*, Law360 (Jan. 15, 2018), <https://www.law360.com/articles/998948>; Nathan Hale, *Class Action Group of the Year: Cohen Milstein*, Law360 (Jan. 20, 2017), <https://www.law360.com/articles/883221/class-action-group-of-the-year-cohen-milstein>.

*Cheese Bar v. The Hartford Financial Services Group, Inc.*, No. 1:20-cv-01094 (D.D.C.); and *Mudpie, Inc. v. Travelers Casualty Insurance*, 3:20-cv-03213 (N.D. Cal., 9th Cir.).

6. His recent successes include *In re Anthem Data Breach Litigation*, No. 5:15-md-02617-LHK (N.D. Cal.), where he worked on the lead counsel team, representing 80 million Americans whose person information had been hacked. The case settled for \$115 million – the largest data breach settlement at that time. He also leads the firm’s litigation efforts in *Ariza, et al. v. Luxottica Retail N. Amer., Inc. d/b/a LensCrafters*, No. 1:17-cv-05216-PKC-RLM (E.D.N.Y.), a multi-state class action alleging various violations of consumer protection statutes, including California’s Unfair Competition Law, for fraudulent marketing practices.

7. Prior to joining Cohen Milstein in 2015, Mr. Graber had a distinguished career at the U.S. Department of Justice (DOJ), serving as Deputy Associate Attorney General and Director of the Residential Mortgage-Backed Securities (RMBS) Working Group at the DOJ, where he oversaw the DOJ’s nationwide investigation into the packaging and sale of mortgage-backed securities (MBS) leading up to the financial crisis, ultimately recovering more than \$36 billion. He supervised more than 100 DOJ prosecutors, lawyers, investigators and analysts and worked closely with senior officials from the SEC, Department of Housing and Urban Development (HUD), Inspector General’s Office for the Federal Finance Agency, and more than 10 state attorney general offices. In 2014, while at the DOJ, Mr. Graber also received the Attorney General’s Distinguished Service Award for his work relating to the \$13 billion settlement with JP Morgan – including, at the time, the largest FIRREA penalty recovered by the DOJ.

8. I am a partner in Cohen Milstein’s Consumer Practice Group and has over 20 years of experience in complex litigation, MDLs, and class actions. This includes *In Re: Lumber Liquidators*, where the defendant sold flooring that contained toxic levels of formaldehyde. I

assisted Co-Lead Counsel and Cohen Milstein Chair Steven Toll by leading offensive discovery efforts, drafting pleadings, and working with experts. Consumer counsel secured a \$36 million settlement within 2 ½ years based on false statements made by a lumber retailer concerning its formaldehyde emissions.

9. In *Khoday v. Symantec Corp.*, I served as the lead attorney and represented a class of purchasers of a product that the defendant Symantec failed to disclose could be obtained for free. I oversaw discovery, deposed witnesses, retained and defended experts, and helped to negotiate a \$60 million settlement that gave participating class members back more than 100 cents on the dollar for their out-of-pocket losses.

10. Additionally, I served on the Plaintiffs' Steering Committee and was co-chair of the expert committee in *In re Apple Inc. Device Performance Litigation*, No. 18-md-2827-EJD (N.D. Cal.), where a \$500 million settlement was approved. Aside from his experience litigating, I have also taught as an adjunct professor at George Washington University School of Law, published articles in *Pace Law Review* and Law360 on class action issues,<sup>6</sup> and spoken at professional gatherings on class action practice.

11. Cohen Milstein also anticipates drawing from its pool of other talented attorneys to work on this matter, including Brian Johnson and Paul Stephan. Mr. Johnson is an associate at Cohen Milstein and a member of the Consumer Practice Group, where he assists in the development of potential cases and provides support in all aspects of current litigation. Prior to

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<sup>6</sup> Douglas McNamara et al., *Reexamining the Seventh Amendment Argument Against Issue Certification*, 34 Pace L. Rev. 1041 (2014); Douglas McNamara, *When Conjoint Analysis Is Not Enough For A Damage Model*, Law360 (Dec. 11, 2019), <https://www.law360.com/articles/1226744>; Douglas McNamara, *Carriuolo v. GM and the Future of the Overcharge Theory*, Law360 (June 2, 2016), <https://www.cohenmilstein.com/sites/default/files/media.9100.pdf>.

joining Cohen Milstein, Mr. Johnson was an Associate at a Missouri-based law firm where he represented consumers in financial lawsuits involving the Fair Debt Collection Practices Act, Fair Credit Reporting Act, and the Telephone Consumer Protection Act. Following law school, Mr. Johnson served as a Law Clerk for the Honorable Margaret L. Sauer and the Honorable Janette K. Rodecap, 16th Circuit Court of Jackson County, Missouri after receiving his law degree from George Washington University.

12. Mr. Stephan is also an associate at Cohen Milstein and a member of the Consumer Practice Group. Mr. Stephan's practice focuses on litigating class actions on behalf of consumers who have been misled, deceived, or harmed by large corporations. Prior to joining Cohen Milstein, Mr. Stephan was a law clerk for the Honorable Anne E. Thompson of the United States District Court for the District of New Jersey. During law school, Mr. Stephan was a law clerk for the U.S. Government Accountability Office, Office of General Counsel. He is the author of an article on arbitration in the *University of Memphis Law Review*. He received his J.D., magna cum laude, Order of the Coif, from the University of Pennsylvania Law School, where he was a Comments Editor of the *University of Pennsylvania Law Review*.

13. Additional background on all of the Consumer Practice Group lawyers is in the Cohen Milstein firm resume attached to this declaration as Exhibit A.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this day 27th day of May 2021:

/s/ Douglas J. McNamara

Douglas J. McNamara